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HUMAN RIGHTS COMMITTEE

Sixty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1848th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 14 July 2000, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Ireland (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1848/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Ireland (CCPR/C/IRL/98/2) (continued)

1. The CHAIRPERSON invited the Irish delegation to reply to questions raised by members of the Committee.

2. Mr. McDOWELL (Ireland), responding to a question on certain provisions of article 41 of the Irish Constitution relating to the role of women, said that those provisions had been much criticized in recent years and the Constitutional Review Group had pronounced them outdated. It had to be said, however, that there was still a considerable body of political opinion in support of mothers working in the home rather than in the workplace. Despite that, over the past 10 years the participation of women in the workforce had risen from 35 to 47 per cent. Budgetary provisions introduced the previous year to provide incentives to mothers to return to the workforce had given rise to some controversy, but he did not think they were likely to be withdrawn. It had been asked whether the changes made under the Employment Equality Act concerning comparators for equal pay had been effective. Until 1998, employment equality legislation had provided that any comparator for equal pay purposes must be employed in the same place as the claimant, but under the new Act similar work outside the workplace could be taken into account in determining whether there was inequality. It had also been suggested that hypothetical as well as real comparators should be used, but in the interests of drafting clear legislation for the benefit of employers who would have to apply the Act in the workplace, it had been thought better to retain actual comparators.

3. On the point raised by Mr. Amor concerning the right to education, he said that article 42 of the Constitution stipulated that parents should be free to choose the form of education their children received, and the State was prohibited from obliging children to attend any particular school in violation of the lawful preferences of their parents. Under the Constitution, every religious denomination had the right to manage its own affairs, to own, acquire and administer property, and to maintain institutions for religious or charitable purposes as well as educational institutions. The State was not permitted to discriminate between schools of different denominations, and was obliged to support all denominational education insofar as was reasonable. The Supreme Court, in considering the legality of the Equal Status Act, had upheld those of its provisions which allowed schools to recruit teachers and to apply administration policies with a view to maintaining their own religious ethos. Thus, the concept of total equality was balanced by the opposite concept, namely that those who ran denominational schools should have certain rights arising from the particular nature of those schools. Although that might seem to run counter to strict equality in some respects, it did have the effect of promoting equality between different religious groups, since all schools received the same amount of State support. No Irish school receiving State aid could compel a child to attend religious instruction classes against his own wishes or the wishes of his parents.

4. On a further question, he said that a Disability Bill was to be introduced in the near future providing comprehensive guarantees for the disabled. A recent Supreme Court judgement had

queried whether the State was entitled to require small enterprises to bear the full cost of implementing State-ordained policies on discrimination against the disabled, and the new legislation would have to take account of that problem. However, he hoped that the Bill would be seen as a huge step forward.

5. It had been asked whether a new law governing privacy was to be introduced, and what were the Government's plans with regard to defamation. It was part of the Government's programme to introduce a bill reforming the law on defamation, which was substantially the same as that of most common-law countries. Concerning the interception of communications, the supervisory role of the courts was a very real one: the judge concerned had powers to monitor, and to inspect, individual files at will on a random basis. However, although there had been eight complaints made to the Complaints Referee in the period between 1994 and 1997, there had been no finding that any interception had been wrongfully made. Appointments to the Censorship of Publications Board and to the Appeal Board were made by the Minister for Justice, Equality and Law Reform, and included a number of practising lawyers. The decisions of both boards was subject to judicial review by the High Court; two such reviews had been carried out in the course of the past two years.

6. Regarding curbs imposed on the right to free speech for undermining the authority of the State, the only case he could recall was one in which Sinn Fein - at the time allied to the Provisional IRA - had applied to the State broadcasting company to participate in a series of party political broadcasts. That application had been refused by the High Court in the light of Sinn Fein's connection to the IRA, which at that time had not been observing a ceasefire.

7. The Prohibition of Incitement to Hatred Act had been passed in 1989, and had been reviewed in 1998 in the context of a European Union (EU) review of compliance by member States with a joint action programme to combat racism and xenophobia. To date, no changes in the law had resulted from that review, but a further review was currently being carried out. Although a number of persons had made speeches which had caused controversy and had been the subject of complaints to the Director of Public Prosecutions, there had so far been no convictions under the Act. It should be noted that when a candidate made an inflammatory speech or statement which might constitute an offence under the Act, the media usually gave it great publicity, which acted as an effective informal sanction since the person concerned would be forced publicly to retract his statement and apologize, and the party he represented would be quick to dissociate itself from him. The media therefore played a useful watchdog role. A draft code of conduct for political candidates had been proposed, abjuring remarks which could amount to incitement to racial disharmony.

8. Concerning immigration and asylum-seekers, he said that while economic motives often underlay abuse of the asylum-seeking procedure, it was wrong to say that Ireland had no system of immigration. No EU national required a work permit to come to work in Ireland, and in 1999 6,000 persons from outside the Union had been granted permits. In the current year, a further 6,000 had been granted permits. He emphasized that genuine asylum-seekers would have the right to refugee status regardless of whether or not they possessed work skills or qualifications. Of course, economic migrants who posed as asylum-seekers were doing a disservice to those seeking to enter Ireland legally, because the time of the immigration service was wasted considering what were in effect false claims.

9. Ms. Evatt had raised the issue of the "dispersal" of asylum-seekers. Although Ireland had enjoyed economic growth of 11 per cent in recent times, Dublin, which was usually the first port of call for asylum-seekers, had an acute housing shortage, and accommodation was at a premium. Since there were no large, purpose-built reception centres, the Government had taken steps to find accommodation in hotels and guest houses in other parts of Ireland. It was true that the result had been a "dispersal" of asylum-seekers geographically, but the adoption of a laissez-faire approach leading to the ghettoization of certain areas of large cities was regarded as not in the best interests of harmony. The Government's aim was to ensure that every community in Ireland received a certain number of asylum-seekers, so that social and attitudinal problems did not develop in any particular location.

10. Ms. Evatt had also raised the question of the Illegal Immigrants (Trafficking) Bill now being scrutinized by the Supreme Court. Under article 6 of the Constitution, a bill passed by both Houses of Parliament would go to the President for signature. If the President had any doubts as to its constitutionality, she could refer it to the Supreme Court for adjudication, and she had recently done so in respect of two provisions of the Bill in question. The first concerned the limitation of the right to judicial review of persons whose deportation had been ordered, and the second concerned the right of the police to detain persons subject to a deportation order if there was reason to believe they might try to evade that order. The Supreme Court must decide on issues referred to it within 60 days. That was another example of how the Constitution worked in defence of human rights by providing for a process of adjudication before, rather than after, a bill became law.

11. In response to a further question, he said he had circulated a list of the public bodies to which the Freedom of Information Act applied: the State broadcasting service and the universities had recently been added to that list.

12. It had been asked whether legal provisions which discriminated between EU and non-EU nationals were consistent with the equality provisions of the Covenant. As part of its obligations under EU treaties, Ireland was bound to accord a large number of rights, notably rights of establishment, rights of travel and rights of residence, to EU nationals. Conversely, it was bound not to accord to Irish citizens any economic and social rights which it denied to other EU nationals. The question was thus one of enhancement of rights rather than discrimination. As he had stated earlier, citizenship was not recognized by the Irish courts as a ground for withholding human rights protection.

13. Another point raised by Ms. Evatt had been why foreign husbands of Irish wives were required to register, but not foreign wives of Irish husbands. The law concerned was based on the Aliens Order of 1946, which in turn was based on the Aliens Act of 1935. That Act dated from an era when the husband had been regarded as solely responsible for establishing domicile, and it would undoubtedly need to be reviewed. Both at the Judicial Studies Institute and under the new training programme for members of the police force, considerable emphasis was given to the subject of violence against women.

14. Lastly, on the subject of the ban on posters containing information on abortion, he said that in the past anti-abortionists had made use of very graphic publicity material which might be

considered by some to be offensive. However, he did not know of any instances where posters had been used to display information on abortion services, and thus the issue was largely academic.

15. The CHAIRPERSON thanked the Irish delegation for its clear and well-structured answers to the Committee's questions. The delegation had stated that the Government did not wish to incorporate the Covenant into domestic law because that would give it a status lower than that of the Constitution. How, then, did the Government justify its decision to incorporate the European Convention on Human Rights into its legislation? She hoped that the Government would find some way of guaranteeing the applicability of all the rights enshrined in the Covenant. She likewise hoped that Ireland would not concentrate exclusively on Europe. Other regions of the world could also benefit from Ireland's contribution to the international body of human rights experience.

16. She asked what would happen if the Committee adopted a decision relating to a specific case involving Ireland. Would Ireland's domestic legislation allow the Government to take any action?

17. The Irish delegation had explained the necessity of the Special Criminal Court. However, members had been concerned not about the existence of the Court, but about the lack of legal foundation for its operations. For instance, some defendants in a certain case had been brought before that Court, while other defendants in the same case had appeared before ordinary courts.

18. Other problems had been mentioned in connection with detention of suspects. The rule allowing suspects to be detained without charge for 72 hours might be inconsistent with article 9, paragraph 1, of the Covenant. Many people were detained without subsequently being charged.

19. The Committee was pleased to hear that Ireland was to review the regulations governing legal aid; she hoped it would also review the regulations relating to the different treatment accorded to men and women married to non-Irish citizens. The Irish representative had referred to the provision of crèche facilities for the children of women Members of Parliament: she hoped that the same facilities would also be made available to the children of male MPs.

20. It seemed clear that Ireland needed to address issues relating to pregnancy and abortion in the light of article 3 of the Covenant. She drew the delegation's attention to the Committee's general comment 28 relating to that article.

21. Mr. McDOWELL (Ireland) thanked Committee members for their constructive comments. Ireland did not concentrate on European affairs to the exclusion of the rest of the world. The Government had undertaken to incorporate the European Convention on Human Rights into domestic legislation as part of its commitment under the Good Friday agreement to work towards uniform human rights protection in the two parts of Ireland. Incorporation of the Convention would be concomitant with the human rights legislation recently enacted by the United Kingdom and applicable in Northern Ireland. His Government had not yet decided exactly how the Convention would be incorporated into domestic legislation.

22. The Government was determined to ensure that the rights enshrined in the Covenant were guaranteed by Irish law, whether through its formal incorporation into the legislation or by some other means. The existence of a third set of human rights principles, alongside those embodied in the Constitution and the European Convention, might prove more confusing than helpful. He hoped that the temporary and minor derogations which Ireland had made to the Covenant showed how seriously the Government had taken its commitments. All those derogations should be removed within a year.

23. Lastly, he wished to pay tribute to the untiring efforts of the non-governmental organizations, many of them run by volunteers, which had contributed greatly to the human rights debate, both within Ireland and before the Human Rights Committee.

The public part of the meeting rose at 3.55 p.m.